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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA
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6 HIEP D. LE,

7 Plaintiff,

8 vs.

9 EQUIFAX INFORMATION SERVICES, LLC.,

10 Defendant.
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Case No. 2:16-cv-02393-RFB-GWF

ORDER

12 This matter is before the Court on Defendant's Motion to File Documents Under Seal (ECF
13 No. 36), filed on September 28, 2017.

14 The Ninth Circuit comprehensively examined the presumption of public access to judicial
15 files and records in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006).
16 There, the court recognized that different interests are at stake in preserving the secrecy of materials
17 produced during discovery and materials attached to dispositive motions. The *Kamakana* court held
18 that a "good cause" showing is sufficient to seal documents produced during discovery. *Id.* at
19 1180. However, the *Kamakana* decision also held that a showing of "compelling reasons" is needed
20 to support the secrecy of documents attached to dispositive motions. A showing of "good cause"
21 does not, without more, satisfy the "compelling reasons" test required to maintain the secrecy of
22 documents attached to dispositive motions. *Id.*

23 *Kamakana* recognized that "compelling reasons" sufficient to outweigh the public's interests
24 in disclosure and justify sealing records exist when court records may be used to gratify private
25 spite, permit public scandal, circulate libelous statements, or release trade secrets. *Id.* at 1179
26 (internal quotations omitted). However, "[t]he mere fact that the production of records may lead to
27 a litigant's embarrassment, incrimination, or exposure to further litigation will not, without more,
28 compel the court to seal its records." *Id.*, citing, *Foltz v. State Farm Mutual Auto Insurance*

1 *Company*, 331 F.3d 1122, 1136 (9th Cir. 1995). To justify sealing documents attached to
2 dispositive motions, a party is required to present articulable facts identifying the interests favoring
3 continuing secrecy *and* show that these specific interests overcome the presumption of public access
4 by outweighing the public's interests in understanding the judicial process. *Id.* at 1181 (internal
5 citations and quotations omitted).

6 Defendant requests leave to file Exhibits 2 through 6, 8, 9-A and 9-B attached to its
7 Response to Plaintiff's Motion for Partial Summary Judgment (ECF No. 37) under seal. Defendant
8 represents that the documents contained in Exhibits 2 through 6 are confidential policies and
9 procedures manuals, which "contain proprietary information on how Defendant processes and
10 maintains its credit reporting procedures and how it trains its employees." *See Motion* (ECF No.
11 25), pg. 4, lns. 20-21 (incorporated by reference into Defendant's current motion). This information,
12 according to Defendant, should be maintained under seal because public disclosure could aid
13 Defendant's competitors in creating or enhancing upon Defendant's policies and procedures, thereby
14 destroying Defendant's competitive advantage. In addition, Defendant argues that the policies and
15 procedures manuals should be kept under seal because public disclosure could "open Equifax's
16 system to potential identity theft by creating a high risk that the criminals would be able to develop
17 methods to successfully circumvent Equifax's procedures." *Id.* at pg. 5, lns. 14-16. Similarly,
18 Defendant seeks to seal Exhibit 9-A to its Response, which is the contract between Defendant and
19 its print-and-mail vendor, Fidelity National Card Services, Inc. Public disclosure of this document
20 would likewise give Defendant's competitors an advantage because it "contains proprietary
21 information on how Equifax processes correspondence and reinvestigation reports for consumers."
22 *Motion* (ECF No. 36), pg. 2, lns. 18-19.

23 Defendant also requests to file Exhibits 8 and 9-B under seal because they are credit and
24 reinvestigation reports that contain Plaintiff's personal identifying information, such as his date of
25 birth, social security number, and financial account numbers. Defendant asserts that simply
26 redacting the information from the documents is not an alternative because redaction "may not leave
27 sufficient meaningful information for the Court to understand the material facts at issue." *Id.* at pg.
28 3, lns. 17-18.

1 On balance, the Court finds that Defendant has provided compelling reasons to justify an
2 order sealing Exhibits 2 through 6, 8, 9-A and 9-B to Defendant's Response to Plaintiff's Motion
3 for Partial Summary Judgment. Therefore, the Court will allow Exhibit 2 through 6, 8, 9-A and 9-B
4 to be filed under seal in their entirety. Accordingly,

5 **IT IS HEREBY ORDERED** that Defendant's Motion to File Documents Under Seal (ECF
6 No. 36) is **granted**.

7 DATED this 29th day of September, 2017.

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10 GEORGE FOLEY, JR.
11 United States Magistrate Judge
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